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THE TAFT-HARTLEY ACT AND THE BALANCE OF POWER IN LABOR RELATIONS*

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THE Taft-Hartley Act[1] has been characterized by some of its enemies as the full employment bill for lawyers. This comment, of course, has reference to the fact that the statute contains many provisions which are somewhat vague and ambiguous and which will require much litigation before their precise meaning becomes clear. While grossly exaggerated, this criticism has some justification. But, it is not the purpose of my address to describe in detail the provisions of this controversial statute. Rather than that, I would like to attempt to assess the Taft-Hartley Act as an instrument of democracy and to assign it, if possible, to its proper place in the history of labor-management relations. Most of all, I shall try to exaluate its probable impact upon the *balance of power* in labor relations. For, this is what I deem to be the real test of this statute and the answer will determine whether its enactment was good or bad for our democratic system.

The term "balance of power" has been most commonly used in the field of international politics. It describes a policy and a technique which have been employed for centuries, notably by England, for the purpose of maintaining a peaceful society of nations. It simply means that, as a plain matter of self-preservation, England has always used her influence to prevent any nation in Europe from becoming so strong that it threatens to engulf

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1 Pub. L. No. 101, 80th Cong., 1st Sess., 29 U. S. C. A. § 141 *et seq.* (Supp. July 1947).

Europe and become a menace to British security. Thus, the English policy has been to support first this nation and then that nation, the essential aim always being to preserve a rough equality of strength between opposing blocs and thereby permit England to hold the residue of power needed to maintain security and peace.

This is a sound policy and one which the English have always followed, Whig or Tory, Conservative or Liberal, and even Labor, without regard for prejudice or sentiment but as a plain matter of national self-interest. Whenever this policy has succeeded there has been peace; whenever it has failed, there has been war.

And, it is not only England that has pursued the policy. It is our own policy as well. The Marshall Plan for aid to Western Europe has been frankly adopted for the purpose of strengthening the Western powers against the expansive tendencies of Communist Russia.

But the need for maintaining a proper balance of power between conflicting interests is not confined to relations between nations. It is equally as important to the preservation of our domestic institutions. In a very real sense, democracy consists of the interplay and clash of opposing forces, each attempting to gain dominance on an economic, social or political plane. The farmer wants more for his wheat, the manufacturer more for his product, and the worker more for his labor, and it is only natural that each of these groups should place its own selfish interests above the common welfare.

I do not wish to imply that this is necessarily bad. Competition is a healthy thing and must be given freedom to assert itself. After all, the basic concept of democracy is that the end result of the interplay of these forces in a free-self-governing society will be wholesome and good. But we have long since abandoned the theory that complete and unbridled freedom for each of these groups to pursue its own course without regard for the general welfare is either possible or desirable. We can agree with Thomas Jefferson that the best government is the least government and, at the same time, recognize that some public intervention is necessary to protect the whole people from the disastrous results which would flow from jungle-type warfare between conflicting pressure groups.

Perhaps the most important and potentially dangerous conflict in our present society is that which exists between capital and labor. We can accept this basic truth without believing Karl Marx and the Communist cliche that class warfare is inevitable and that we will never have internal peace until one class totally destroys the other. It is perfectly natural and normal that there should be differences between capital and labor since the one is interested in high profits and the other in high wages; but it is dangerously false to assume that their differences are irreconcilable. The area of conflict is in fact small and these two groups have more interests in common than in conflict, the chief one being a mutual interest in maintaining volume production of goods and thus insuring plenty and prosperity for all.

Nevertheless, the conflict does exist on a short-run basis and it is wise to recognize it. We have seen it manifested from time to time in strikes and work stoppages and in other kinds of industrial strife. And the conflict is one which the public cannot afford to view with indifference. This contest between capital and labor is not a mere sports spectacle like a football game or a prize fight. The public can take sides in a sports event, select a favorite and "root" for him, knowing full well that it matters little who wins. But in the field of employer-labor relations, the public cannot give away the luxury of taking sides in the over-all struggle although each of us may and should form a judgment as to the merits of any particular dispute. In the clash between capital and labor, the public has too much at stake to view the scene as an isolated sports spectacle. We cannot afford to permit either of these powerful opponents to be utterly defeated and carried from the ring. They are the twin economic supports of our democratic society. Without both of them, real democracy cannot exist.

This proposition seems so obvious that it hardly requires proof. We need only to give heed to the lessons of history. Equality of power between capital and labor—with the balance of power in the public—is essential. Too much power in the hands of capital tends to depress wages, destroy the health and morale of the working man, decrease his productivity. This in turn makes for class bitterness, crime, and immorality, and even contains the seeds of revolt. Economically, it results in giving the masses too small a share of the fruits of their labor, shrinks

their purchasing power, and in turn retards production. This can only mean economic depression and hard times for all.

By the same token, we cannot sit by and permit labor to gain the upper hand for this means that wages will get out of joint with prices. When this occurs, either one of two things may happen. Production may cease because the employer is no longer making a profit or breaking even or it may mean that prices will be raised to absorb the increased wages and there will be set in motion a race up the escalator between wages and prices in the direction of uncontrolled inflation and eventual collapse.

That being the situation, it seems axiomatic that the public must not allow capital and labor to kill off one another or to permit one to obtain the upper hand. On a national scale, that would be at least as disastrous as would be the sight of the Russian bear with its body sprawled over Western Europe and its forepaws resting on the British Isles.

In other words, the successful operation of our economic system requires that we preserve the balance of power in the international field. In approaching this problem, therefore, wisdom requires that we act without prejudice or sentiment but with the national welfare uppermost in our minds. For its own protection, the public must be ever alert to inequalities in the power of capital and labor and be ready to step in and restore the balance.

In the beginning, of course, it was labor which had to be given a shot in the arm. As we were making an effort to come out of the depression of 1929, labor was a child, small, weak and sick. There were no laws of any consequence recognizing or implementing labor rights; and mass unemployment had reduced American labor to a low level characterized mainly by a struggle for bare existence. This situation undoubtedly contributed to the boom and crash of 1929. During the period preceding the crash, there was a great increase in the total wealth of the nation but, due to labor's weak and unorganized status, its own proportionate share in this wealth was decreasing all the time. Thus, it has been reliably stated that, in 1849, the wage earner's share in each dollar created by manufacture was 51 per cent; in 1919, 42 per cent; and in 1933, only 36 per cent. This decline occurred despite the fact that production per worker per hour had increased 71 per cent over the

same period.[2] It has also been pointed out by the New York Times that "although payrolls in December 1934 were only about 60 per cent of the total in 1926, dividends and interest were 150 per cent of their total in 1926." It is small wonder then that in 1929, the peak year before the crash, about twelve million families in this country had incomes of less than $1500 a year.[3]

The sad state in which labor found itself was aggravated by the determination on the part of some of our leading industrialists to resist collective bargaining by fair means and sometimes by foul, such as the use of labor spies and the ruthless employment of company police to crack the heads of union organizers and terrorize strikers. The strength of labor was further dissipated by the willingness of the courts to use the labor injunction to defeat strikes and by the judicial extension of the Sherman Anti-Trust Act to labor unions where they combined to gain some economic objective.[4] The cumulative effect of these and other adverse factors was too heavy a burden for labor to bear. Consequently, except for some old established craft unions who were stubbornly holding on, the labor movement was virtually destroyed prior to the advent of the New Deal.

Then came Roosevelt with his program of recovery and social reform and labor had a phenomenal rebirth. This can be attributed chiefly to the friendly aid and encouragement received from the Roosevelt administration and to the passage of those twin statutes—the Norris-LaGuardia Act[5] and the National Labor Relations Act,[6] and to a lesser degree, the Fair Labor Standards Act of 1938,[7] all of which were enacted by Congress as a part of a sweeping reform program. What these statutes did was to breathe new life in the labor movement by the following:

1. removing the labor injunction as a weapon for employers to use against unions in labor disputes (the Norris-LaGuardia Act);

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[2] See testimony of Francis Biddle, *Hearings before Senate Committee on Education and Labor on S.* 195, 74th Cong., 1st Sess. 76-77 (1939).

[3] See testimony of Senator Wagner, *id.* at 34-35.

[4] Loewe v. Lawler, 208 U. S. 274 (1908); Duplex Printing Press Co. v. Deering, 254 U. S. 443 (1921); American Steel Foundries v. Tri-City Central Trades Council, 257 U. S. 184 (1921); Bedford Cut Stone Co. v. Journeymen Stone Cutters' Ass'n, 274 U. S. 37 (1927).

[5] 47 STAT. 70 (1932), 29 U. S. C. A. § 101 *et seq.* (1940).

[6] 49 STAT. 449 (1935), 29 U. S. C. A. § 151 *et seq.* (1940).

[7] 52 STAT. 1060 (1938), 29 U. S. C. A. § 201 *et seq.* (1940).

2. establishing minimum wages and the eight-hour day, thus giving rise to the now universal custom of paying premium rates for overtime worked (the Fair Labor Standards Act); and

3. most important of all, giving public support to the right of workers to organize and bargain collectively with their employers concerning wages, hours, and conditions of work (the National Labor Relations Act).

Not only were these laws enacted but they were enforced to the hilt by the army of zealots which trooped to Washington with the coming of the New Deal.

For a time the enforcement of labor's magna carta was stymied by a wholesale attack by management on the constitutionality of these statutes. But when, in 1937, the Supreme Court in the *Jones & Laughlin* case[8] upheld the constitutionality of the National Labor Relations Act, the strength of the labor movement began to grow by leaps and bounds. The C. I. O., a confederation of large unions organized on industrial lines, was established under the leadership of John L. Lewis, and its power and prestige soon outstripped the more conservative American Federation of Labor. But even the latter organization was reinvigorated and strengthened by the support it drew from the new national labor policy.

A good index to the new-found vigor of labor is found in the rapid rise in union membership which followed the passage of three statutes. In 1926, the total membership of labor unions in the United States was about three million, and this figure is based on union estimates and is undoubtedly padded. In 1946, this membership had risen to almost fifteen million actual dues-paying members ,of which about six million were members of the C. I. O.[9]

During this intervening period, the principles and practices of collective bargaining have been established throughout the land, plant by plant, industry by industry, until at present the nation's economy is almost completely unionized and millions of workers are covered by union contracts and enjoying high wages, good working conditions, and many other fruits of collective bargaining. Our basic industries, coal, steel, transportation, communications,

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[8] N. L. R. B. v. Jones & Laughlin Steel Corp., 301 U. S. 1 (1937).

[9] See mimeographed compilation, "Membership of Labor Unions in the United States", Bureau of Labor Statistics, Department of Labor, 1947.

automobiles, manufacturing, and the service industries are all organized by strong unions which have been recognized by the employers as the collective bargaining representatives of the workers.

While there are some who think otherwise, I am convinced that this was a good thing — good not only for labor but for the country; good even for capital because our system of mass production cannot be maintained without a happy and contented force of workers, receiving sufficient wages to purchase the great mass of goods which are the product of the joint efforts of capital and labor. It is only from the short-range point of view that the interests of capital and labor in a democratic system such as ours are in conflict. In a larger sense, they merge and become one and the same thing, a mutual interest in maintaining the maximum production of consumers' goods.

But it may well be asked, what was good about a labor policy which concentrates in the hands of one man, the leader of a large labor union, the power to cripple production and stagnate our national economic life? or in a system which condoned or at least permitted labor racketeering, secondary boycotts, and jurisdictional strikes? It is not my purpose to defend these abuses. They are wrong and should be curbed but such indications of lack of responsibility and of dictatorship in labor unions must not be misunderstood. These developments represent the excesses of labor unions and labor leaders who have acquired too much power. They do not discredit collective bargaining as one of the fundamental bases of industrial democracy.

Nevertheless, it was these things that led to the passage of the Taft-Hartley Act. The public began to sense that the pendulum had swung too far to the left, that the sickly child had become a strong brawling giant, a little too much aware of his power and perhaps a bit spoiled by too much help and too many presents from his Uncle Sam.

Therefore the passage of the Taft-Hartley Act was not the result of the machinations of a few men, the political tools of capital, as the unions would have us believe. Seldom has there been a law passed which had such widespread support from so many classes of people. The law was passed in response to a clear public demand for labor reforms and for curbs on irresponsible union conduct.

This is not to say that the Taft-Hartley Act is a perfect law or, as Gilbert & Sullivan would say, "the embodiment of everything that's excellent." Certainly it could be improved upon and Congress is right now holding hearings on proposed changes in the law. But its basic purpose is sound. What it seeks to do is restore the balance of power between capital and labor by correcting some union vices and prohibiting certain union conduct which has been found detrimental to the public interest.

The Taft-Hartley Act seeks to achieve this purpose in three major ways. One is to prohibit unions from engaging in certain types of strikes and secondary boycotts; the second is to give more freedom to the individual employee by banning the closed shop, permitting decertification of unions, and forbidding unions to coerce employees; and the third is to revamp and strengthen the administration of the law in order to obtain a more fair, impartial, and vigorous enforcement of our national labor policy.

Thomas Jefferson once said, "The execution of the laws is more important than the making of them." Congress has recognized this fundamental fact in the Taft-Hartley Act. Thus, the Labor Board is no longer judge, jury, and prosecutor. The three-cornered hat has been removed and the Board is now confined to the judicial capacity of deciding cases which are brought before it by the general counsel. The prosecuting or enforcement function previously performed by the Board has been given to the General Counsel who operates with complete independence in deciding whether to issue complaints or institute representation proceedings. Moreover, in carrying out his function, the General Counsel has been given the right to apply to the federal courts for an injunction against unfair labor practices, and he has used this new weapon sparingly but wisely against both unions and employers where the public welfare appeared to demand it.

Already we are beginning to see signs that the administration of the law has improved. Not only the General Counsel, but the Board as well, has made a good faith and conscientious effort to give full effect to the intent of Congress. As an example, the Board has recently issued a decision upholding the right of an employer, as a matter of free speech, to publicize his position in a labor dispute to the public and to his employees. In the past, such conduct would have resulted in a finding of an unfair labor

practice and the issuance of a cease and desist order against the employer by the Board.

In the long run, the extent to which this statute will be successful can only be judged by its effect on the balance of power between capital and labor. If it swings the advantage too far to the right, it will leave us no better off or even worse off than before. If it does not go far enough towards correcting union abuses, more legislation will be required to fill the gap. It is too early to be sure but my guess is that the new law does not go too far but just about far enough, particularly if it is given a vigorous and impartial administration.

There are already certain strong indications that the heavy balance in favor of labor has been rectified. The unbiased, yet firm, enforcement of the law by the Labor Board and its General Counsel has been highly encouraging. Also the strong and forthright manner in which the government and the courts handled the last coal strike and enjoined its continuance was an object lesson to headstrong labor leaders as to the effectiveness of the new law and as to the penalties which they may incur if they insist upon acting in utter disregard of the public welfare.

It would be most unfortunate, on the other hand, if management should become too self-confident and should use its newfound strength to attempt to take away from labor the legitimate gains which have been made. There are undoubtedly some labor-haters who would like to do just that but, fortunately, they are in the minority. The vast and overwhelming majority of employers not only accept but embrace as a good thing the principles and practices of collective bargaining. They ask only that the unions shall be responsible and democratic and that their dealings with employers be conducted with fairness, decency and restraint.

Our thinking about labor has come a long, long way during the last hundred years and even more during the last twenty. There was a time in old England when a worker who combined with other workers to attempt to raise his wages could be sent to jail as a criminal, even if he did not resort to a strike. And, as late as 1806, in the famous *Philadelphia Cordwainer's* case,[10] Recorder Levy made this statement:

[10] (Pa. 1806) 3 Commons & Gilmore, Documentary History of American Industrial Society (1910-1911) 59, 233.

> "A combination of workmen to raise their wages may be considered in a two-fold point of view: One is to benefit themselves — the other is to injure those who do not join their society. The rule of law condemns both."

Cordwainers are humble shoemakers, and the only offense they committed was to attempt to better their lot by collectively seeking an increase in wages from their employer.

This medieval view that all unions constitute unlawful and even criminal conspiracies has long since been abandoned and replaced by a more enlightened and realistic policy. Thus, we find the conservative Chief Justice Hughes making the following statement in the *Jones & Laughlin* case which upheld the constitutionality of the NLRA:

> "This (meaning the right of employees to organize and bargain collectively) is a fundamental right. Employees have as clear a right to organize and select their own representatives for lawful purposes as the respondent has to organize its business and select its own officers and agents."[11]

But between the *Cordwainer* decision and the date Chief Justice Hughes made this statement, labor went through a long and painful struggle to achieve legal recognition of its rights. Today, however, the principle and practice of collective bargaining may be said to be firmly and permanently established throughout our nation. Collective bargaining is not merely a boon to labor. It is an essential mechanism in a free democratic society. It simply means that capital and labor shall make a good faith effort to resolve their differences at the bargaining table and, on the whole, it has been remarkably successful. The alternative to free collective bargaining is state control and government regulation not only of wages but of prices as well — an alternative which all of us who believe in freedom must abhor.

It is important to bear in mind that this principle of collective bargaining is strengthened, not weakened, by the Taft-Hartley Act. In passing the law, Congress was careful to preserve the principle of collective bargaining and in fact for the first time made it a rule of law that unions as well as employers have an obligation to bargain collectively and in good faith. The Act simply attempts to impose on unions some of the same obligations which have previously applied and which still apply to employers. In so doing, the underlying aim of Congress was not so much to mete

[11] 301 U. S. 33 (1937).

out a rough sort of justice; it was not an eye for an eye and a tooth for a tooth proposition. Rather, the aim was to restore a proper balance between capital and labor and thus protect the public from the disruptive conduct of a few power-drunk labor leaders and some irresponsible labor unions.

In conclusion, I should like only to add one thought. Americans have great faith in the law, but we lawyers know that there are definite limitations on what can be done by legislation. It is a great temptation to pass a law to cure every ill that develops in our economic life; but legislation is not enough. It requires the cooperation and good will of all our citizens to give our laws meaning and to make our system work.

And so it is in labor-management relations. The public can only act through our government to maintain the two groups at an equal level of bargaining strength. We can pass and enforce laws to bring capital and labor together at the bargaining table, each strong and independent and able to stand up to the other on an equal basis. But that is all we can do. We can lead the horses to water but we cannot make them drink in equal proportions from the common trough. That is the point when capital and labor must be willing to compromise their differences and arrive at honorable solutions which are fair to both and not unduly burdensome to the public. For example, they must not fall into the habit of raising wages and then prices with the thought that after all the public must pay through the nose in the end. Capital and labor must recognize that they have a public obligation to hold the line before our economy is shattered on the rocks of uncontrolled inflation. In that way only can the proper balance be maintained between prices and wages and in that way and no other can industrial democracy be made to work.

Moreover, in this cooperative effort, the lawyer can play a useful part. Government regulations and the legal intricacies of the Taft-Hartley Act and other labor laws have made the lawyer a necessary element in the collective bargaining process. This presents to all of us a challenge and an opportunity — a challenge to prove that we can be useful in a broad sense in the peaceful settlement of labor disputes and an opportunity to serve the public interest as well as that of our client in helping to arrive at solutions which are fair and reasonable and which contribute to the welfare and prosperity of our nation.